

## **401 KAR 47:140. Public information and permit issuance procedures.**

RELATES TO: KRS 224.01, 224.10, 224.40, 224.43, 224.46, 224.50, 224.70, 224.99

STATUTORY AUTHORITY: KRS 224.10-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 224 requires the cabinet to adopt rules and administrative regulations for the management, processing, or disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This chapter establishes the permitting standards for solid waste sites or facilities, the standards applicable to all solid waste sites or facilities, and the standards for certification of operators. An overview of the permit program is found in Section 1 of 401 KAR 47:080. This administrative regulation sets forth permit issuance and public information procedures.

Section 1. Application for a Permit. (1) Any person who is required to have a solid waste site or facility permit under KRS Chapter 224 shall complete, sign and submit an application to the cabinet. Applications are not required for solid waste site or facility permits-by-rule specified in Section 1 of 401 KAR 47:150.

(2) The cabinet shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

(3) Permit applications shall comply with the signature and certification requirements of Section 6 of 401 KAR 47:160.

(4) Upon completing the review, the cabinet shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the cabinet shall list the information necessary to make the application complete. When the application is for an existing solid waste site or facility, the cabinet shall specify in the notice of deficiency a date for submitting the necessary information. The cabinet shall notify the applicant when the application is complete after receiving this information.

(5) If an applicant fails or refuses to correct deficiencies in the application or submit additional information, the permit shall be denied and, if applicable, enforcement actions taken under the appropriate statutory provision.

(6) If the cabinet decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall accompany the cabinet representative on a site visit upon request by the cabinet.

(7) The cabinet may require such additional information as it deems necessary for a final determination regarding the application.

Section 2. Modification or Revocation of Permits. (1) A permit for a solid waste site or facility may be modified, or revoked, either at the request of the permittee or upon the cabinet's initiative. However, a permit shall only be modified or revoked for the reasons specified in Sections 2 and 4 of 401 KAR 47:130 and following the procedures of 401 KAR Chapter 40. All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the cabinet decides the request is not justified, the cabinet shall notify the permittee and give a reason for the decision. Denials of requests for modification or revocation are not subject to public notice, comment, or public hearings.

(3) If the cabinet tentatively decides to modify a permit under Section 2 of 401 KAR 47:130, the cabinet shall prepare a proposed permit under Section 3 of this administrative regulation incorporating the proposed changes. The cabinet may request additional information and, in the case of a modified permit, require the submission of an updated permit application if necessary. In the case of revoked permits, the cabinet shall require the submission of a new application to obtain a new permit.

(a) In a permit modification under this section, only those conditions to be modified shall be reopened when a new proposed permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

(b) When a permit is revoked, a new application may be submitted to the cabinet.

(c) Minor modifications as defined in Section 3 of 401 KAR 47:130 are not subject to the requirements of this section.

(4) If the cabinet tentatively decides to revoke a permit under Section 4 of 401 KAR 47:130, it shall issue a notice of intent to revoke. A notice of intent to revoke shall be subject to public notice.

(5) All proposed permits (including notices of intent to revoke) prepared under Sections 3 through 5 of this administrative regulation shall be based on the administrative record as outlined in Section 5 of this administrative regulation.

(6) The cabinet may consider conformance with the solid waste management area plan(s) or requirements of the district or county as a basis for permit modification.

Section 3. Permit Issuance. (1) Once the technical application is complete, the cabinet shall tentatively decide whether to issue the permit or to deny the application. In making this determination the cabinet shall consider the requirements specified in the waste management administrative regulations and in KRS 224.40-305.

(2) If the cabinet tentatively decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application shall be subject to public information process as specified in Section 12 of this administrative regulation. If the cabinet's final decision reverses the tentative decision to deny the permit application, the cabinet shall withdraw the notice of intent to deny and proceed to prepare a proposed permit under subsection (3) of this section.

(3) If the cabinet makes a preliminary determination to issue the permit, a proposed permit is prepared which shall contain the following information:

(a) The proposed design and specifications;

(b) Any conditions in accordance with Section 2 of 401 KAR 47:120; and

(c) The proposed permit shall be based on the administrative record outlined in Section 5 of this administrative regulation.

(4) The cabinet may consider conformance with the solid waste management area plan(s) or requirements of the district or county as a basis for permit issuance.

(5) All proposed permits including permit major modifications as defined in 401 KAR 47:130, prepared by the cabinet under this section shall be subject to the public information process as specified in Section 12 of this administrative regulation.

Section 4. Fact Sheet. (1) A fact sheet shall be prepared for every proposed permit for a solid waste facility which includes a contained landfill, residual landfill, or a research, development, and demonstration facility, and for every proposed permit that the cabinet finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the proposed permit. The cabinet shall send this fact sheet to the applicant and, on request, to any other person.

(2) The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the proposed permit;

(b) The type and quantity of wastes which are proposed to be and are being stored, treated or disposed of and a summary of the facility design including the cap, liner, and leachate collection system specification;

(c) A brief summary of the basis for the proposed permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative

record required by Section 5 of this administrative regulation;

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified;

(e) A description of the procedures for reaching a final decision on the proposed permit including:

1. The beginning and ending dates of the comment period under Section 9 of this administrative regulation and the address where comments shall be received;

2. Procedures for requesting a hearing and the nature of that hearing; and

3. Any other procedures including public participation in the final decision.

(f) Name and telephone number of a person to contact for additional information.

Section 5. Administrative Record for Proposed Permits. (1) The provisions of a proposed permit prepared by the cabinet under Section 3 of this administrative regulation shall be based on the administrative record.

(2) For preparing a proposed permit under Section 3 of this administrative regulation, the administrative record shall consist of:

(a) The application, if required, and any supporting data furnished by the applicant;

(b) The proposed permit or notice of intent to deny the application or to revoke the permit;

(c) The fact sheet (see Section 4 of this administrative regulation);

(d) All documents cited in the fact sheet; and

(e) Other documents contained in the supporting file for the proposed permit.

(3) Material readily available at the cabinet's office need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet. This includes published material that is generally available, and that is included in the administrative record.

(4) This section applies to all proposed permits when public notice was given after the effective date of these administrative regulations.

Section 6. Public Information Process Overview. (1) The public information process may consist of five (5) phases. These phases include:

(a) A public notice;

(b) A special notice with executive summary;

(c) A public comment period;

(d) A public hearing; and

(e) An adjudicative hearing.

(2) The type of notice or hearing varies with each permit classification as well as the part of the application or modification being approved or denied by the cabinet. Sections 12 through 14 of this administrative regulation shall provide the specific process for each permit type.

Section 7. Public Notice. (1) Public notices issued under this chapter shall contain the following information as specified in Sections 12 through 14 of this administrative regulation.

(a) Name and address of the office processing the permit action for which notice is being given;

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) A brief description of the business conducted at the facility or activity described in the permit application;

(d) A description of the proposed location of the solid waste site or facility;

(e) Name, address and telephone number of a person from whom interested persons may obtain further information, and the location of a repository for documents in the county in which the site or facility is proposed, including copies of the proposed permit, fact sheet and application;

(f) The time and place of any hearing already scheduled and procedures by which the public may

participate in the final permit decision;

(g) The location of the administrative record required by Section 5 of this administrative regulation, including a local repository in the county in which the site or facility is proposed, the times at which the record shall be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record;

(h) The statements required in KRS 224.40-310, if applicable; and

(i) Any additional information considered necessary or proper.

(2) Public notices may describe more than one (1) permit or permit action.

(3) Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format.

(4) Public notices issued by the cabinet shall be distributed by the following methods:

(a) By mailing a copy of a notice to the following persons:

1. The applicant;

2. Any other agency that the cabinet knows has issued or is required to issue an environmental permit for the same facility or activity;

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, the state historic preservation officers, and other appropriate government authorities, including any other affected states;

4. Persons on a cabinet mailing list which has been compiled by notifying the public of the opportunity to be put on the mailing list through periodic publication. Individuals shall request in writing to be on the list;

5. Any unit of local government having jurisdiction over the area where the facility is proposed to be located;

6. Each state agency having any authority under state law with respect to the construction or operation of such facility; and

7. The owner(s) of all property adjacent to property to be used by the applicant for the proposed facility;

(b) Publication of a notice in a daily or weekly major local newspaper of general circulation as required by KRS 224.40-310(2) where the proposed site is located; and

(c) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

**Section 8. Special Notice/Executive Summary.** A special notice in the form of an executive summary of the permit application shall be submitted to the county judge/executive or mayor of an urban-county government and members of the fiscal court or urban-county council of the county or urban-county government in which the site or facility is or shall be located as specified in KRS 224.40-310.

**Section 9. Public Comment Period.** The public comment period when provided shall allow at least thirty (30) days for public comment during which any interested person may submit written comments on the application or proposed permit and may request an adjudicative hearing pursuant to KRS 224.40-310. The comment period shall commence on the date of the public notice providing a comment period is published.

**Section 10. Public Hearings.** (1) The cabinet may hold a public hearing on the basis of request or when a significant degree of public interest exists concerning a solid waste site or facility permit decision. The cabinet at its discretion may hold a public hearing whenever such a hearing might clarify one (1) or more issues involved in the permit decision.

(2) Whenever a public hearing is held, the secretary shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(3) Any person may submit oral or written statements and data. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required. The public comment period under Section 9 of this administrative regulation shall automatically be extended to the close of any administrative hearing. The presiding officer may also extend the comment period by so stating at the hearing.

(4) A written transcript of the hearing shall be made available to any person upon payment of the actual cost of reproducing the original.

Section 11. Adjudicative Hearing. (1) The cabinet shall hold an adjudicative hearing as specified in KRS 224.40-310 and consistent with the requirements and provisions of KRS 224.10-420(2) whenever petition in opposition to a proposed permit determination and a request for an adjudicative hearing is received within thirty (30) days of public notice. All other permitting determinations shall be subject to an adjudicative hearing only as provided in KRS 224.10-420(2).

(2) Whenever possible the cabinet shall schedule a hearing under this section at a location convenient to the population center nearest to the proposed facility provided the hearing location is in the same county as required by KRS 224.40-310.

Section 12. Public Information Process for Landfills. (1) Upon receipt of a notice of intent to apply for a contained, residual, or construction/demolition debris landfill, or upon receipt of a request for a major permit modification, the cabinet shall require the permit applicant to provide public notice. The contents of this public notice shall include those items listed in Section 7(1)(a) through (d) of this administrative regulation.

(2) When the administrative portion of the application is deemed complete, the cabinet shall:

(a) Issue a special notice as outlined in Section 8 of this administrative regulation; and

(b) Require the applicant to make public notice which provides for a public comment period and provides that any interested person may request a public hearing.

(3) The cabinet shall:

(a) Require the applicant to provide public notice when review of the technical portion of the application begins. The contents of this public notice shall include those items listed in Section 7(1)(a) through (d). The notice shall also state that the executive summary shall be available from the office of the county judge/executive or mayor of an urban-county government; and

(b) Issue a special notice as outlined in Section 8 of this administrative regulation.

(4) Once a preliminary determination on the application has been made and the cabinet has prepared a proposed permit, the applicant shall issue a public notice. The public notice shall provide for a public comment period. The public notice shall also contain the following statement: "Any person who may be aggrieved by the issuance of a permit for this proposed waste site or facility may file with the cabinet a petition which sets forth the grounds of the objection and demands a hearing pursuant to KRS 224.10-420(2)."

(5) A public notice including a public comment period shall be published by the cabinet when a notice of intent to deny a landfill application is issued. The public notice shall be distributed as specified in Section 7(4) of this administrative regulation. The contents of the public notice shall include those items listed in Section 7(1)(a) through (i).

(6) A public notice shall be published by the cabinet upon the issuance of the construction/operating permit or upon renewal of a landfill permit. The public notice shall be distributed as specified in Section 7(4)(b) of this administrative regulation. The contents of the public notice shall include those items listed in Section 7(1)(a) through (g) of this administrative regulation.

Section 13. Public Information Process for Landfarming. The public information process for landfarming shall be followed as specified in 401 KAR 48:200.

Section 14. Public Information Process for Research, Development and Demonstration Permits. Once the cabinet has issued a proposed permit, the applicant of a research, development and demonstration permit shall publish a public notice. This notice shall be distributed by the cabinet as specified in Section 7(4)(b) of this administrative regulation. The public notice shall provide for a public comment period. The public notice shall also contain the following statement: "Any person who may be aggrieved by the issuance of a permit for this proposed waste site or facility may file with the cabinet a petition which sets forth the grounds of the objection and demands a hearing pursuant to KRS 224.10-420(2)."

Section 15. Reopening of the Public Comment Period. (1) If any data, information or arguments submitted during the public comment period (including information or arguments that any condition of the proposed permit or permit denial is inappropriate) appear to raise substantial new questions concerning a permit, the cabinet shall take one (1) or more of the following actions:

(a) Prepare a new proposed permit, appropriately modified, under Section 3 of this administrative regulation;

(b) Reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted.

(2) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. A public notice shall define the scope of the reopening.

(3) The cabinet may also, in the circumstances described above, elect to hold further proceedings. This decision may be combined with any of the actions enumerated in subsection (1) of this section.

Section 16. Response to Comments. (1) At the time that any final permit decision is issued, the cabinet shall issue a response to comments. This response shall:

(a) Specify which provisions, if any, of the proposed permit have been changed in the final permit decision, and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the proposed permit raised during the public comment period, or during any public hearing.

(2) The response to comments shall be available to the public and shall be deposited in an appropriate facility in the county which the site or facility is proposed.

Section 17. Issuance and Effective Date of Permit. (1) After the close of the public comment period and any applicable hearing on a proposed permit, the cabinet shall issue a final permit decision. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke, or terminate a permit.

(2) A final permit decision shall become effective on the date issued by the cabinet.

(3) The cabinet shall document the disposition of significant comments received and make it available to the public by supplying it to the repository established in the county in which the facility is proposed.

Section 18. Past Performance Considered in Review. Past performance of the owner or operator may be considered in the review for issuance or denial of the permit application and in the determination of any requirement for specialized conditions. (16 Ky.R. 1744; 2189; eff. 5-8-1990; Crt eff. 10-9-2018.)